



Legislative Research Council

MINUTES

Agricultural Land Assessment Implementation and Oversight Advisory Task Force

Senator Larry Rhoden, Chair
Representative Justin Cronin, Vice Chair

First Meeting
2014 Interim
July 22, 2014

Room 413
State Capitol
Pierre, South Dakota

Tuesday, July 22, 2014

Senator Larry Rhoden called to order the first 2014 interim meeting of the Legislative Research Council Agricultural Land Assessment Implementation and Oversight Advisory Task Force at 10:30 a.m. (CT), July 22, 2014, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Larry Rhoden, Chair, Jason Frerichs, Al Novstrup, and Billie Sutton; Representatives Julie Bartling (via telephone), Mark Mickelson, and Jim Peterson; Walt Bones, Kirk Chaffee, Paul Dennert, Curt Everson, Tom Hansen, and Lyle Perman. Members excused: Representative Justin Cronin.

Staff members present included Fred Baatz, Principal Research Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC) and some documents can be found on the LRC website at <http://legis.sd.gov/Interim/CommitteeDocuments.aspx?Session=2014>.

Approval of Minutes

REPRESENTATIVE MICKELSON MOVED, SECONDED BY MR. BONES TO APPROVE THE MINUTES OF THE OCTOBER 29, 2013, MEETING. The motion prevailed unanimously on a voice vote.

Opening Remarks

Senator Larry Rhoden, Chair, gave some history of the task force, including citing SDCL 10-6-33.35, which is the law establishing this task force and outlining the duties of the task force (**Document #1**).

Report from the Summer Work Group **School District Capital Outlay Tax**

Mr. Tony Venhuizen, Director of Policy and Communication, Governor's Office, gave a brief update on the Governor's summer work group established to look at the school district capital outlay tax, which held its first meeting mid-June. The next meeting will be July 30. The group will be looking at a variety of issues and concerns that were discussed during the 2014 Legislative Session.

At the June meeting, the group heard from the Department of Education, the Bureau of Finance and Management, and the Department of Revenue. The group will discuss different options for the capital outlay tax and how each option would affect the school districts.

Discussion of School District Capital Outlay Taxing Authority

Mr. Michael Houdyshell, Director, Division of Property and Special Taxes, pointed out that there are three different groups studying this topic over the summer: the Governor's Work Group, the Legislative Planning Committee, and this Task Force.

Mr. Houdyshell gave a PowerPoint presentation, "Capital Outlay Taxes" (**Document #2**). The capital outlay fund of the school district is a fund provided by law to meet expenditures which result in the acquisition or lease of or additions to real property, plant, or equipment. Such an expenditure shall be for land; existing facilities; improvement of grounds; construction of facilities; additions to facilities; remodeling of facilities; the purchase or lease of equipment; installment or lease-purchase payments on real property, plant, or equipment; transportation costs; textbooks and instructional software; and to purchase warranties on capital assets. Temporary additional uses (referred to as fund flexibility) granted by legislation passed in 2009 and sunsetted in 2018 are: purchase of property insurance and casualty insurance; payments for energy costs and the cost of utilities; motor fuel or any portion of a contract providing transportation to students; and the total amount of these expenses may not exceed forty-five percent of the total tax revenues.

In FY2013, \$15,109,981 was the total amount used just for the fund flexibility items. **Mr. H. Paul Dennert** pointed out that those payments previously came out of the general fund expenditures prior to these exceptions being granted in 2009.

Mr. Houdyshell continued by pointing out that capital outlay taxes have increased by 100.5% since 2003. In regard to capital outlay taxes, for taxes paid in 2014, 6 school districts levied at no capital outlay tax, 8 levied between .230 and .848, 32 levied between 1.0 and 1.98, 65 levied between 2.0 and 2.993, 40 districts levied at the maximum of \$3.0/\$1,000.

Capital outlay tax levies are limited during the phase-in process for the productivity valuation system in that they cannot increase more than three percent or the index factor, whichever is less. However, that limit does not apply to school districts that have less than a ten percent change in the total taxable valuation from the previous year of all real property in the school district.

Representative G. Mark Mickelson asked about a shift in taxes paid between the different property classifications. Mr. Houdyshell explained that counties are limited on how much they can collect in property taxes from one year to the next. When property assessments go up in one classification, there can be a shift on how much is paid by each of the different classifications.

Report on the 2015 Assessment Information

Mr. Michael Houdyshell, Director, Division of Property and Special Taxes, introduced Ms. Wendy Semmeler who has replaced Ms. Colleen Skinner as the Property Tax Program Manager.

Mr. Houdyshell presented the Report on Productivity Valuation for the 2015 Assessment Year (**Document #3**). The items of note for 2015 that Mr. Houdyshell reported are:

- The cropland Olympic average increased 14.12 percent on a statewide basis (compared to 13.59 percent in 2014).
- The noncropland Olympic average increased 2.00 percent on a statewide basis (compared to 1.49 percent last year).

- Six counties are at full productivity on both cropland and noncropland (Clay, Lincoln, McCook, Minnehaha, Sanborn, Union).
- Codington County had no NASS data published for 2013, so cropland valuations were statistically calculated based on surrounding counties in same resource area.
- Beadle, Sully, Butte, Corson, Harding, Custer, and Fall River counties had no cash rent data published for 2013, so noncropland Olympic averages were statistically calculated based on surrounding counties in same resource area.

The report also includes a complete list of the changes in valuation for the 2015 assessment year productivity information for each county.

Representative Jim Peterson asked about how the sales price data for commodities is captured and used when figuring these valuations.

Dr. Burton Pflueger, SDSU, Brookings, explained that the data is gathered directly from the elevators and includes the weights and bushels sold each month. The market year price is matched with the production year, so if the market year runs from September through August, the production year is calculated using those same months.

Mr. Houdyshell went through the pages of the report listing the crop and non-crop Olympic averages for 2015. Actual productivity for the years 2006 through 2013 are used when calculating the Olympic averages for 2015. The report also includes the commodity prices for all crops for years 2000 through 2013.

Page 13 of the report is a map showing the 2013 pasture rent paid per acre by county. The final two pages of the report are the sale of ag and non-ag land by county and gives the median ratio of those sales.

NRCS Web Soil Survey and Property Assessment Adjustment

Mr. Michael Houdyshell, Director, Division of Property and Special Taxes, said that there have been some issues with the NRCS websoil survey and the new data that has been made available. Counties have reported that NRCS is showing new map units with new soil types and the counties tables don't reflect that new information. The Department of Revenue is working with the counties to devise a game plan for addressing this issue. This may cause some confusion for the land owner but the committee should be aware that we are addressing it.

There is statutory authority for county assessors to make property assessment adjustments. Documented adjustments do not impact the level of assessment in the county. Adjustments for permanent conditions are recorded in the Department of Revenue office.

Representative Mickelson said that some factors that would be considered when making an adjustment are rocks, access, and topography. He asked if adjustments can be made for easements. Mr. Houdyshell said that easements are not valid reasons for adjustments because an easement is a voluntary arrangement the landowner makes. Conservation easements may be something that the legislature will want to look at as far as considering those easements when making adjustments.

Mr. Kirk Chaffee asked if the adjustments are lumped into one sum for each county and how they are archived and if that changes the weighted ratio for a county. Mr. Houdyshell said that the department looks to see if the ratio is about the same and if something seems askew with the assessments, the department takes a closer look at it.

Representative Peterson asked if the Department of Revenue has done any additional study on actual use. Mr. Houdyshell said that they have met with lobbyists representing the agricultural groups regarding actual use. The ag groups may be able to obtain better data and might be able to come up with their own method of analysis. If the department does an analysis with the data they have now, the results will be essentially the same as when the data was studied in 2012.

Pennington County Work Group Classifying Property as Ag Land

Ms. Brenda Whiting, Pennington County Ag Taxation Committee, talked to the committee about how the Pennington County group believes the criteria for classification of land as agricultural are outdated and unfair (**Document #4**). The document Ms. Whiting distributed states that, "SDCL 10-6-31.3 sets forth criteria for land to be classified as agricultural for taxation purposes. This law contains ambiguities and lacks clear definitions of terms resulting in inconsistent interpretation and application of the law for small Ag landowners with less than 160 acres."

In the document that Ms. Whiting distributed is a copy of HB1097 that was introduced during the 2014 Legislative Session but failed to pass out of the Senate Ag Committee. Ms. Whiting asked for the Task Force's assistance in finding a way to move forward with this legislation and help the Pennington County group find some type of resolution.

Senator Frerichs said that in classifying property it is important to look at the true use of the property.

Ms. Cory Tomovick, Pennington County Work Group, Rapid City, said that changes are occurring in the ag sector and more people are purchasing small acreages of land in order to grow their own food and be involved in ag production on a smaller level. According to Ms. Tomovick, current laws make it difficult for people to get involved in agriculture on a smaller scale.

Senator Rhoden pointed out some of the issues with HB1097 and that without several changes to that proposed legislation it will most likely have the same results as it did this past session.

Ms. Tomovick said that the current law is so ambiguous that counties may not be following the law now. She said that it needs to be fixed.

Representative Mickelson said that the current law gives discretion to the county assessors. He asked what the Pennington County Assessor told this Pennington County Work Group. Ms. Tomovick said that the County raised the number of acres required to be classified ag land but then lowered the number of acres back down to 40. Ms. Tomovick said that the real issue is that different assessors interpret the law differently; contiguous to one assessor may mean something different to another assessor.

Mr. Jay Alderman, Pennington County Work Group and the Pennington County States Attorney's Office, Rapid City, said that the work group is looking for possible solutions from the Task Force. He said they are not married to the bill presented during the 2014 session, but that they need to find a way to correct the current law and address the fact that it is outdated.

Mr. Alderman said that some of the terms that need to be better defined are principle use, contiguous acreage, family gross income, and subdivisions.

Senator Rhoden said that small ag is something the task force should look at more closely. The definition for contiguous acres is an issue that needs to be resolved. These are issues for future consideration by the task force.

Public Testimony

Mr. David Gutterres, farmer/rancher from south of Kadoka, distributed a handout giving a history of property taxes on his land in Jackson County (**Document #5**). The document shows how the property taxes on his land are increasing and that the percentage of increase is continuing to increase. If this action continues, Mr. Gutterres said that he will soon not be able to afford to own his land.

Mr. Gutterres said that he knows the task force is aware of this, but he thought if he showed them the actual numbers for his property it would make it more comprehensible. Mr. Gutterres said that he has talked to his County Assessor and has actually challenged his assessment, but nothing can be done because the assessor is just following state statutes. Mr. Gutterres asked the task force to consider supporting actual use which will support family farmers.

Mr. Hal Werner, Oacoma, said that he owns a parcel of land in Lyman County, 756 acres that he inherited from his parents. Mr. Werner said that the valuation on that land has gone up 117% in 5 years. His tax bill has gone from \$1200 to over \$4000. Mr. Werner did appeal his taxes but the appeal was rejected because the assessor followed the statutes.

He said he is not sure what the answer is but that he thinks there should be a way to utilize actual use when assessing ag land.

Committee Discussion and Staff Direction

Representative Peterson distributed handouts showing the local effort calculations regarding property taxes. One handout showed the calculations from July 2013 and the other had the calculations for July 2014 (**Documents #6 - #7**). Representative Peterson said that some of the figures regarding the education formula are estimates and need to be actual numbers.

Mr. Dennert said that when the estimates are used, it looks like ag land is putting a lot less toward education than it actually is and that is misleading to the public. Senator Rhoden said that the numbers were wrong last year and that they are wrong again this year and that he will be looking into this issue.

Senator Rhoden asked the members what issues or information do they want the staff to look into prior to the next task force meeting.

Mr. Chaffee said that SDCL 10-6-31.3 needs to be looked at and that the definitions for contiguous and gross family income need some consideration.

Senator Rhoden asked if the task force would like to revisit HB 1009 from 2006. **Mr. Tom Hansen** said that there might be some wisdom in doing that. Mr. Hansen said that he understands that there is some property in the Black Hills that is valued high, but that issue may extend beyond Pennington County. Senator Rhoden added that it may be time to look at different classifications for large ag and small ag operations.

Representative Julie Bartling pointed out that one of the testifiers had mentioned income guidelines for ag land that are used in other states. Representative Bartling asked if the staff could gather that information from other states for the next meeting.

Mr. Lyle Perman said that if the task force is looking at different pieces of legislation it would be helpful to have copies of those bills when discussing them.

Mr. Walt Bones said that it is the charge of this task force to revisit the cap rate. He wondered if the task force would be looking at that or is it going to stay the same.

Dr. Pflueger said that the cap rate recommendation is due to the Department of Revenue by September 1 each year and the task force usually discusses that at a later meeting.

Mr. Bones said that last year the task force talked about moving toward actual use. He asked if that is still what the task force members want to do and, if so, what needs to be done to get to that decision.

Representative Peterson said that a bill was introduced this past session but the bill was tabled because there was not sufficient information to move it forward. We thought that the different ag groups would come up with a proposal and with the necessary data and that did not happen. Representative Peterson said that solid figures by county need to be compiled before proceeding with this concept. He added that the task force owes it to a lot of people to pursue this issue.

Mr. Hansen said that in order to make an intelligent decision, the affect this change would have needs to be factored in. He continued saying that changing to actual use would probably have little effect on the county but could make a difference to the individual taxpayer.

Mr. Chaffee said that he has looked at how actual use would affect Meade County. He said that FSA does have a lot of available information and that made it possible for him to work the numbers. Actual use did make some difference in a few of the parcels, but on a countywide basis it made very little difference.

Mr. Perman said that he would like to look at this data Mr. Chaffee was able to put together for Meade County and review the results.

Senator Frerichs said that the task force needs to discuss easements because this issue is not going away. He said that easements are not being treated consistently throughout the state and that the assessors need more direction on this issue. Senator Frerichs asked that the assessors continue to advise the task force regarding easements so that they can be fairly applied between counties.

Senator Frerichs added that he serves on the Governor's Pheasant Habitat Work Group and the members of that group would like to see actual use when determining ag land values. He said that the data is already entered into FSA, so it is available through certain sources.

The next meeting of the Agricultural Land Assessment Implementation and Oversight Advisory Task Force will be Monday, September 15, 2014, in room 413 of the State Capitol.

Adjournment

REPRESENTATIVE MICKELSON MOVED, SECONDED BY SENATOR FRERICHS, TO ADJOURN. The motion prevailed unanimously on a voice vote.

The meeting adjourned at 3:15 p.m.

This meeting is being held in a physically accessible location. Any individual needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605-773-3251) in advance of the meeting to make further arrangements.

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